

Act No. 134
Public Acts of 1997
Approved by the Governor
November 13, 1997
Filed with the Secretary of State
November 14, 1997
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**STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997**

Introduced by Reps. Kilpatrick, Alley, Middaugh, Mans, Sikkema, Walberg, Wetters, LaForge, Brown, Anthony, Bodem, Basham, Birkholz, Byl, DeVuyst, Rhead, McNutt, Brater and Callahan

ENROLLED HOUSE BILL No. 5093

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 14809 (MCL 324.14809), as added by 1996 PA 132.

The People of the State of Michigan enact:

Sec. 14809. (1) A person is immune from any administrative or civil penalties and fines under this act and from criminal penalties and fines for negligent acts or omissions under this act related to a violation of article II and chapters 1 and 3 of article III and the rules promulgated under those articles if the person makes a voluntary disclosure to the appropriate state or local agency. However, the immunity provided for in this section does not apply to any criminal penalties and fines for gross negligence or to any criminal penalties and fines for violations of part 301, 303, 315, or 325 or section 3108 or 3115a. At the time that the disclosure is made to the state or local agency, the person making the voluntary disclosure under this section shall provide information showing that the conditions of subdivisions (a) to (d) are met, supporting his or her claim that the disclosure is voluntary. For the purposes of this section, a disclosure of information by a person under this section is voluntary if all of the following occur:

- (a) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person.
- (b) The person making the disclosure initiates an appropriate and good-faith effort to achieve compliance, pursues compliance with due diligence, and promptly corrects the noncompliance or condition after discovery of the violation. If evidence shows the noncompliance is the failure to obtain a permit, appropriate and good-faith efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.
- (c) The disclosure of the information arises out of an environmental audit.
- (d) The environmental audit occurs before the person is made aware that he or she is under investigation by a regulatory agency for potential violations of this act.

(2) There is a rebuttable presumption that a disclosure made pursuant to and in full compliance with this section is voluntary. The presumption of voluntary disclosure under this section may be rebutted by presentation of an adequate showing to the administrative hearing officer or appropriate trier of fact that the disclosure did not satisfy the requirements for a voluntary disclosure under subsection (1). In any administrative or judicial proceeding pursuant to this subsection, the person claiming that a disclosure is voluntary shall provide the supporting information required in subsection (1) and a showing of the appropriate and good-faith effort to achieve compliance, shall pursue compliance

with due diligence, and shall promptly correct the noncompliance in the period of time since the date of the disclosure. The state or local agency shall bear the burden of rebutting the presumption of voluntariness. Agency action determining that disclosure was not voluntary shall be considered final agency action subject to judicial review.

(3) Unless a final determination shows that a voluntary disclosure has not occurred, a notice of violation or cease and desist order shall not include any administrative or civil penalty or fine or any criminal penalty or fine for violations for which immunity is provided under this section.

(4) The elimination of administrative or civil penalties or fines or criminal penalties or fines under this section does not apply if the trier of fact finds any of the following:

(a) The person has knowingly committed a criminal act.

(b) The person has committed significant violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events giving rise to the violations, within the 3-year period prior to the date of the disclosure. For purposes of this subsection, a pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the 3-year period immediately prior to the date of the voluntary disclosure. In determining whether a person has a pattern of continuous or repeated violations under this subsection, the trier of fact shall base the decision on the compliance history of the specific facility at issue.

(c) The violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

(d) The instance of noncompliance resulted in serious harm or in imminent and substantial endangerment to human health or the environment.

(e) The violation is of the terms of an administrative or judicial order.

(5) In those cases where the conditions of a voluntary disclosure are not met but a good-faith effort was made to voluntarily disclose and resolve a violation detected in a voluntary environmental audit, the state and local environmental and law enforcement authorities shall consider the nature and extent of any good-faith effort in deciding the appropriate enforcement response and shall mitigate any civil penalties based on a showing that 1 or more of the conditions for voluntary disclosure have been met.

(6) The immunity provided by this section does not abrogate a person's responsibilities as provided by applicable law to correct the violation, conduct necessary remediation, or pay damages.

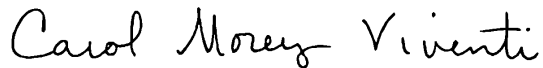
(7) In order to receive immunity under this section, a facility conducting an environmental audit under this part shall give notice to the department of the fact that it is planning to commence the audit. The notice shall specify the facility or portion of the facility to be audited, the anticipated time the audit will begin, and the general scope of the audit. The notice may provide notification of more than 1 scheduled environmental audit at a time.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5092 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.